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## Title 24 —Housing and Urban Development

### Subtitle A —Office of the Secretary, Department of Housing and Urban Development

#### Part 5 —General HUD Program Requirements; Waivers

#### Subpart F —Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

##### Family Income

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

**Source:** 61 FR 54498, Oct. 18, 1996, unless otherwise noted.

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.*; 34 U.S.C. 12471 *et seq.*; Sec. 327, Pub. L. 109-115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

**Source:** 61 FR 5202, Feb. 9, 1996, unless otherwise noted.

**Editorial Note:** Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

##### § 5.609 Annual income.

(a) Annual income includes, with respect to the family:

- (1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and
- (2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

(b) Annual income does not include the following:

- (1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.
- (2) The following types of trust distributions:
  - (i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):
    - (A) Distributions of the principal or corpus of the trust; and
    - (B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.
  - (ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

- (3) Earned income of children under the 18 years of age.
- (4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.
- (5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.
- (6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.
- (7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.
- (8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.
- (9)
  - (i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and
  - (ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.
    - (A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from—
      - (1) The Federal government;
      - (2) A State, Tribe, or local government;
      - (3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);
      - (4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
      - (5) An institution of higher education.
    - (B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—
      - (1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;
      - (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section);
      - (3) Gifts, including gifts from family or friends; or
      - (4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual

costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii)(E) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

- (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;
- (2) Expressly to assist a student with the costs of higher education; or
- (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

- (1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).
- (2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:
  - (i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or
  - (ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(12)

- (i) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
  - (ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
  - (iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.
  - (iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.
- (13) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
  - (14) Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611.
  - (15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.
  - (16) Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.
  - (17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.
  - (18) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit.
  - (19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.
  - (20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

- (21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.
- (22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the FEDERAL REGISTER to identify the benefits that qualify for this exclusion. Updates will be published when necessary.
- (23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.
- (24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:
  - (i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.
  - (ii) Direct Federal or State payments intended for economic stimulus or recovery.
  - (iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.
  - (iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.
  - (v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).
  - (vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.
  - (vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.
- (25) Civil rights settlements or judgments, including settlements or judgments for back pay.
- (26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.
- (27) Income earned on amounts placed in a family's Family Self Sufficiency Account.
- (28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

- (i) Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and
- (ii) Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

(c) **Calculation of Income.** The PHA or owner must calculate family income as follows:

(1) **Initial occupancy or assistance and interim reexaminations.** The PHA or owner must estimate the income of the family for the upcoming 12-month period:

- (i) To determine family income for initial occupancy or for the initial provision of housing assistance; or
- (ii) To determine family income for an interim reexamination of family income under § 5.657(c), § 960.257(b), or § 982.516(c) of this title.

(2) **Annual Reexaminations.**

- (i) The PHA or owner must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the PHA or owner uses a streamlined income determination under § 5.657(d), § 960.257(c), or § 982.516(b) of this title.
- (ii) In determining the income of the family for the previous 12-month period, the PHA or owner must take into consideration any redetermination of income during the previous 12-month period resulting from an interim reexamination of family income under § 5.657(c), § 960.257(b), or § 982.516(c) of this title.
- (iii) The PHA or owner must make adjustments to reflect current income if there was a change in income during the previous 12-month period that was not accounted for in a redetermination of income.

(3) **Use of other programs' determination of income.**

- (i) The PHA or owner may, using the verification methods in paragraph (c)(3)(ii) of this section, determine the family's income prior to the application of any deductions applied in accordance with § 5.611 based on income determinations made within the previous 12-month period for purposes of the following means-tested forms of Federal public assistance:
  - (A) The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, et seq.).
  - (B) Medicaid (42 U.S.C. 1396 et seq.).
  - (C) The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 et seq.).
  - (D) The Earned Income Tax Credit (26 U.S.C. 32).
  - (E) The Low-Income Housing Credit (26 U.S.C. 42).
  - (F) The Special Supplemental Nutrition Program for Woman, Infants, and Children (42 U.S.C. 1786).

- (G) Supplemental Security Income (42 U.S.C. 1381 *et seq.*).
  - (H) Other programs administered by the Secretary.
  - (I) Other means-tested forms of Federal public assistance for which HUD has established a memorandum of understanding.
  - (J) Other Federal benefit determinations made in other forms of means-tested Federal public assistance that the Secretary determines to have comparable reliability and announces through the FEDERAL REGISTER.
- (ii) If a PHA or owner intends to use the annual income determination made by an administrator for allowable forms of Federal means-tested public assistance under this paragraph (c)(3), the PHA or owner must obtain it using the appropriate third-party verification. If the appropriate third-party verification is unavailable, or if the family disputes the determination made for purposes of the other form of Federal means-tested public assistance, the PHA or owner must calculate annual income in accordance with 24 CFR part 5, subpart F. The verification must indicate the tenant's family size and composition and state the amount of the family's annual income. The verification must also meet all HUD requirements related to the length of time that is permitted before the third-party verification is considered out-of-date and is no longer an eligible source of income verification.
- (4) **De minimis errors.** The PHA or owner will not be considered out of compliance with the requirements in this paragraph (c) solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA or owner determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.
- (i) The PHA or owner must still take any corrective action necessary to credit or repay a family if the family has been overcharged for their rent or family share as a result of the de minimis error in the income determination, but families will not be required to repay the PHA or owner in instances where a PHA or owner has miscalculated income resulting in a family being undercharged for rent or family share.
  - (ii) HUD may revise the amount of de minimis error in this paragraph (c)(4) through a rulemaking published in the FEDERAL REGISTER for public comment.

[88 FR 9657, Feb. 14, 2023]

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## Title 24 —Housing and Urban Development

### Subtitle A —Office of the Secretary, Department of Housing and Urban Development

#### Part 5 —General HUD Program Requirements; Waivers

#### Subpart F —Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

##### Family Income

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

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**Source:** 61 FR 5202, Feb. 9, 1996, unless otherwise noted.

**Editorial Note:** Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

#### § 5.611 Adjusted income.

*Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) **Mandatory deductions.**

- (1) \$480 for each dependent, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25;
- (2) \$525 for any elderly family or disabled family, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25;
- (3) The sum of the following, to the extent the sum exceeds ten percent of annual income:
  - (i) Unreimbursed health and medical care expenses of any elderly family or disabled family; and
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with a disability, to the extent necessary to enable any member of the family (including the member who is a person with a disability) to be employed. This deduction may not exceed the combined earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) **Additional deductions.**



- (1) For public housing, the Housing Choice Voucher (HCV) and the Section 8 moderate rehabilitation programs (including the moderate rehabilitation Single-Room Occupancy (SRO) program), a PHA may adopt additional deductions from annual income.
    - (i) **Public housing.** A PHA that adopts such deductions will not be eligible for an increase in Capital Fund and Operating Fund formula grants based on the application of such deductions. The PHA must establish a written policy for such deductions.
    - (ii) **HCV, moderate rehabilitation, and moderate rehabilitation Single-Room Occupancy (SRO) programs.** A PHA that adopts such deductions must have sufficient funding to cover the increased housing assistance payment cost of the deductions. A PHA will not be eligible for an increase in HCV renewal funding or moderate rehabilitation program funding for subsidy costs resulting from such deductions. For the HCV program, the PHA must include such deductions in its administrative plan. For moderate rehabilitation, the PHA must establish a written policy for such deductions.
  - (2) For the HUD programs listed in § 5.601(d), the responsible entity must calculate such other deductions as required and permitted by the applicable program regulations.
- (c) **Financial hardship exemption for unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses.**
- (1) **Phased-in relief.** This paragraph provides financial hardship relief for families affected by the statutory increase in the threshold to receive health and medical care expense and reasonable attendant care and auxiliary apparatus expense deductions from annual income.
    - (i) **Eligibility for relief.** To receive hardship relief under this paragraph (c)(1), the family must have received a deduction from annual income because their sum of expenses under paragraph (a)(3) of this section exceeded 3 percent of annual income as of January 1, 2024.
    - (ii) **Form of relief.**
      - (A) The family will receive a deduction totaling the sum of the expenses under paragraph (a)(3) of this section that exceed 5 percent of annual income.
      - (B) Twelve months after the relief in this paragraph (c)(1)(ii) is provided, the family must receive a deduction totaling the sum of expenses under paragraph (a)(3) of this section that exceed 7.5 percent of annual income.
      - (C) Twenty-four months after the relief in this paragraph (c)(1)(ii) is provided, the family must receive a deduction totaling the sum of expenses under paragraph (a)(3) of this section that exceed ten percent of annual income and the only remaining relief that may be available to the family will be paragraph (d)(1) of this section.
      - (D) A family may request hardship relief under paragraph (c)(2) of this section prior to the end of the twenty-four-month transition period. If a family making such a request is determined eligible for hardship relief under paragraph (c)(2) of this section, hardship relief under this paragraph ends and the family's hardship relief shall be administered in accordance with paragraph (c)(2) of this section. Once a family chooses to obtain relief under paragraph (c)(2) of this section, a family may no longer receive relief under this paragraph.

(2) **General.** This paragraph (c)(2) provides financial relief for an elderly or disabled family or a family that includes a person with disabilities that is experiencing a financial hardship.

(i) **Eligibility for relief.**

(A) To receive hardship relief under this paragraph (c)(2), a family must demonstrate that the family's applicable health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses increased or the family's financial hardship is a result of a change in circumstances (as defined by the responsible entity) that would not otherwise trigger an interim reexamination.

(B) Relief under this paragraph (c)(2) is available regardless of whether the family previously received deductions under paragraph (a)(3) of this section, is currently receiving relief under paragraph (c)(1) of this section, or previously received relief under paragraph (c)(1) of this section.

(ii) **Form and duration of relief.**

(A) The family will receive a deduction for the sum of the eligible expenses in paragraph (a)(3) of this section that exceed 5 percent of annual income.

(B) The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever comes earlier. However, responsible entities may, at their discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues.

(d) **Exemption to continue child care expense deduction.** A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue the child care expense deduction under paragraph (a)(4) of this section. The responsible entity must recalculate the family's adjusted income and continue the child care deduction if the family demonstrates to the responsible entity's satisfaction that the family is unable to pay their rent because of loss of the child care expense deduction, and the child care expense is still necessary even though the family member is no longer employed or furthering his or her education. The hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days. Responsible entities, at their discretion, may extend such hardship exemptions for additional 90-day periods based on family circumstances.

(e) **Hardship policy requirements.**

(1) **Responsible entity determination of family's inability to pay the rent.** The responsible entity must establish a policy on how it defines what constitutes a hardship under paragraphs (c) and (d) of this section, which includes determining the family's inability to pay the rent, for purposes of determining eligibility for a hardship exemption under paragraph (d) of this section.

(2) **Family notification.** The responsible entity must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from the hardship exemption. The notice must also inform the family of when the hardship exemption will begin and expire (i.e., the time periods specified under paragraph (c)(1)(ii) of this section or within 90 days or at such time as the responsibility entity determines the exemption is no longer necessary in accordance with paragraphs (c)(2)(ii)(B) or (d) of this section).

[88 FR 9659, Feb. 14, 2023]

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## **Title 24 —Housing and Urban Development**

### **Subtitle A —Office of the Secretary, Department of Housing and Urban Development**

#### **Part 5 —General HUD Program Requirements; Waivers**

#### **Subpart F —Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance**

##### **Family Income**

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**Source:** 61 FR 5202, Feb. 9, 1996, unless otherwise noted.

**Editorial Note:** Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

#### **§ 5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.**

- (a) This section applies to the public housing program and the Section 8 tenant-based assistance program.
- (b) The PHA must make best efforts to enter into cooperation agreements with welfare agencies under which such agencies agree:
  - (1) To target public assistance, benefits and services to families receiving assistance in the public housing program and the Section 8 tenant-based assistance program to achieve self-sufficiency;
  - (2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in these housing assistance programs.

[65 FR 16717, Mar. 29, 2000]